

2007 – 2009

North Dakota Secretary of State Recount Guidelines

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2008



SECRETARY OF STATE

Alvin A Jaeger

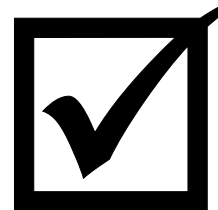
State of North Dakota
600 E Boulevard Ave Dept 108
Bismarck ND 58505-0500

ELECTIONS DIVISION

(701) 328-4146

soselect@nd.gov

www.nd.gov/sos/electvote



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North Dakota Secretary of State Recount Guidelines

These Recount Guidelines are offered to election officials of this state to assist in conducting election recounts. The Guidelines have not been officially promulgated as rules in the North Dakota Administrative Code; however, NDCC § 16.1-16-01 requires that recounts of elections “must be conducted according to guidelines established by the secretary of state.” The Guidelines are based on the understanding of the law pertaining to recounts and other provisions of election law, as well as established election practices in this state by the Secretary of State Elections Division. In the event of a conflict between any of these Guidelines and the express provisions of any statute, state law would govern.

Canvassing Board Determination

Canvassing boards and the offices for which authority is given to determine recount availability
[*NDCC § 16.1-16-01\(3\)*](#)

- School Canvassing Board (when held separate from city and county elections)
 - School Board Members
 - School Measures
- City Canvassing Board
 - Special elections for city offices held at a time other than the June Election
 - City Measures
- County Canvassing Board
 - County Offices
 - City Offices
 - School Board Members (when held in conjunction with county elections)
 - County or City Measures
- State Canvassing Board
 - Federal Offices
 - Statewide Offices
 - Judicial District Offices
 - Legislative Offices
 - Statewide Measures

Recount Thresholds

Primary Elections

- **Automatic Recounts** – If a person fails to be nominated by 1% or less of the vote cast for the candidate receiving the most votes for the office sought.
[*NDCC § 16.1-16-01\(1\)\(a\)*](#)
 - Example 1 (Vote for 1)
 - Votes Cast:
 - Candidate A 1000
 - Candidate B 990
 - Candidate C 800
 - Formula: $1000 \times 1\% = 10$ votes and $1000 - 990 = 10$ votes
 - A recount would be automatically ordered since the margin of votes between Candidate A and B is 1% or less of the total votes received by Candidate A
 - Example 2 (Vote for 2)
 - Votes Cast:
 - Candidate A 5321
 - Candidate B 4899
 - Candidate C 4846
 - Candidate D 33
 - Formula: $5321 \times 1\% = 53.21$ votes and $4899 - 4846 = 53$ votes
 - If the margin of votes had been 54, an automatic recount would not be ordered since this is greater than 1%

- All legally voted and cast ballots containing the contest must be recounted and recounting all votes cast for the contest can change the number of votes given to every candidate within that contest
 - In a vote for 2 contest, if the margin of votes between the candidate receiving the most votes and the candidate receiving the second most votes is less than 1%, a recount is not ordered since both candidates were nominated
- **Demand Recounts** – If a person fails to be nominated by more than 1% but less than 2% of the vote cast for the candidate receiving the most votes for the office sought.
NDCC § 16.1-16-01(2)(a)
 - Example 1 (Vote for 1)
 - Votes Cast:
 - Candidate A 1000
 - Candidate B 985
 - Candidate C 800
 - Formula: $1000 \times 2\% = 20$ votes and $1000 - 985 = 15$ votes
 - A recount may be demanded by Candidate B since the margin of votes between Candidate A and B is less than 2% of the total votes received by Candidate A
 - If the margin of votes between Candidates A and B had been 20 votes, a demand recount would not be allowed since the law says “less than 2%.”
 - Example 2 (Vote for 2)
 - Votes Cast:
 - Candidate A 5321
 - Candidate B 4899
 - Candidate C 4846
 - Candidate D 33
 - Formula: $5321 \times 2\% = 106.42$ votes and $4899 - 4846 = 53$ votes
 - If the margin of votes had been 107, a demand recount could not be requested since this is greater than 2%
 - All legally voted and cast ballots containing the contest must be recounted and recounting all votes cast for the contest can change the number of votes given to every candidate within that contest
- **Is it an Automatic or a Demand Recount?** – If by chance both an automatic recount situation and a demand recount possibility exist within a contest, the automatic recount takes precedence since all votes are recounted.
 - Example (Vote for 2)
 - Votes Cast:
 - Candidate A 5500
 - Candidate B 5000
 - Candidate C 4990
 - Candidate D 4925
 - Candidate C is 11 votes shy of nomination and an automatic recount exists since the margin between Candidates B & C is less than 55 votes ($5500 \times 1\% = 55$)
 - Candidate D is 76 votes shy of nomination and a demand recount exists since the margin between Candidates B & D is less than 110 votes ($5500 \times 2\% = 110$)
 - Since an automatic recount exists in this contest, Candidate D will already participate in the automatic recount

General Elections

- **Automatic Recounts** – If a person fails to be elected by a 0.5% or less of the vote cast for the candidate receiving the most votes for the office sought.

NDCC § 16.1-16-01(1)(b)

- Example 1 (Vote for 1)
 - Votes Cast:
 - Candidate A 1000
 - Candidate B 995
 - Candidate C 800
 - Formula: $1000 \times 0.5\% = 5$ votes and $1000 - 995 = 5$ votes
 - An automatic recount is ordered since the margin of votes between Candidate A and B is 0.5% or less of the total votes received by Candidate A
- Example 2 (Vote for 2)
 - Votes Cast:
 - Candidate A 5321
 - Candidate B 4899
 - Candidate C 4879
 - Candidate D 33
 - Formula: $5321 \times 0.5\% = 26.6$ votes and $4899 - 4879 = 20$ votes
 - If the margin of votes had been 27, an automatic recount would not be ordered since this is greater than 0.5%
 - All legally voted and cast ballots containing the contest must be recounted and recounting all votes cast for the contest can change the number of votes given to every candidate within that contest
 - In a vote for 2 contest, if the margin of votes between the candidate receiving the most votes and the candidate receiving the second most votes is less than 0.5%, a recount is not ordered since both candidates were elected

- **Demand Recounts** – If a person fails to be elected by more than 0.5% but less than 2% of the vote cast for the candidate receiving the most votes for the office sought.

NDCC § 16.1-16-01(2)(b)

- Example 1 (Vote for 1)
 - Votes Cast:
 - Candidate A 1000
 - Candidate B 985
 - Candidate C 800
 - Formula: $1000 \times 2\% = 20$ votes and $1000 - 985 = 15$ votes
 - A recount could be demanded by Candidate B since the margin of votes between Candidate A and B is less than 2% of the total votes received by Candidate A
 - If the margin of votes between Candidates A and B had been 20 votes, a demand recount would not be allowed since the law says “less than 2%.”

- Example 2 (Vote for 2)
 - Votes Cast:
 - Candidate A 5321
 - Candidate B 4899
 - Candidate C 4846
 - Candidate D 33
 - Formula: $5321 \times 2\% = 106.42$ votes and $4899 - 4846 = 53$ votes
 - If the margin of votes had been 107, a demand recount could not be requested since this is greater than 2%
 - All legally voted and cast ballots containing the contest must be recounted and recounting all votes cast for the contest can change the number of votes given to every candidate within that contest
- **Is it an Automatic or a Demand Recount?** – If by chance both an automatic recount situation and a demand recount possibility exist within a contest, the automatic recount takes precedence since all votes are recounted.
 - Example (Vote for 2)
 - Votes Cast:
 - Candidate A 5500
 - Candidate B 5000
 - Candidate C 4990
 - Candidate D 4925
 - Candidate C is 11 votes shy of election and an automatic recount exists since the margin between Candidates B & C is less than 55 votes ($5500 \times 0.5\% = 27.5$)
 - Candidate D is 76 votes shy of election and a demand recount exists since the margin between Candidates B & D is less than 110 votes ($5500 \times 2\% = 110$)
 - Since an automatic recount exists in this contest, Candidate D will already participate in the automatic recount

Measure Contests

- A question, measure, or bond issue submitted to electors decided by a margin equal to or less than 0.25% of the total votes cast for and against the question.
NDCC § 16.1-16-01(1)(c)
 - Example:
 - Votes Cast

• YES	5005
• NO	4995
 - Formula: $5005 + 4995 = 10,000$ total votes and $10,000 \times 0.25\% = 25$ vote margin
 - A recount is held since the margin of votes is less than 25 votes
 - North Dakota law allows for automatic recounts only on measures
 - Demand recounts of measures are not authorized

Demand Recount Requests

NDCC § 16.1-16-01(3)

- A candidate must make their demand for a recount within three days of the appropriate canvassing board meeting. The demand must be made in writing to the appropriate filing officer and must state the reason the recount is being demanded – that the candidate failed to be nominated or elected by less than 2% of the votes given to the candidate receiving the highest number of votes.
- Appropriate Canvassing Boards and Filing Officers for Demand Recounts
 - School Canvassing Board (when held separate from city and county elections)
 - School Board Candidates file with School Business Manager
 - City Canvassing Board
 - Special elections for city offices held at a time other than the June Election
 - City Candidates file with City Auditor
 - County Canvassing Board – Candidates file with County Auditor
 - County Offices
 - City Offices
 - School Board Members (when held in conjunction with county elections)
 - State Canvassing Board – Candidates file with Secretary of State
 - Federal Offices
 - Statewide Offices
 - Judicial District Offices
 - Legislative District Offices
 - Multi-County District Offices

The Cost of a Demand Recount

NDCC § 16.1-16-01(3)

- A candidate who failed to be nominated or elected by less than 2% of the votes given to the candidate receiving the most votes must include a bond in an amount sufficient to pay the actual cost of the recount
- If the recount involves more than one county, separate bonds must be sent along with the recount demand to the counties involved in the recount
- Actual costs include:
 - Recount employee wages per hour based on the amount the jurisdiction pays for trained election workers on election day
 - Recount employees are entitled to any other reimbursement normally given to election workers
- Actual costs do not include the time spent by:
 - Local election official in charge of recount
 - Recount board members

Setting the Date for a Recount

NDCC § 16.1-16-01(4)

- County, City, or School Offices and Measures
 - Within 4 days of the meeting of a County, City, or School Canvassing Board, the County Auditor, City Auditor, or School Business Manager shall set the date
 - The date must be within eight days after the meeting of the Canvassing Board
- Legislative District Offices
 - Within 4 days of the meeting of the State Canvassing Board, the Secretary of State must notify the County Auditors of those counties affected by the recount of the date or dates of the recount
 - The date must be within 7 days of the notice given to the County Auditors
- Federal, Statewide, Judicial District, and Statewide Measures
 - Within 4 days of the meeting of the State Canvassing Board, the Secretary of State must notify the County Auditors of those counties affected by the recount of the date or dates of the recount
 - The date must be within 14 days of the notice given to the County Auditors

Recount Employees

NDCC § 16.1-16-01(5)

- School Board Elections (when held separate from city and county elections) – School Business Manager and up to 4 qualified electors of the school district
- City Elections (when held separate from city and county elections) – City Auditor and up to 4 qualified electors of the city
- School Board or City Elections (when held in conjunction with county elections) – County Auditor and up to 4 qualified electors of the school district or city
- County, Legislative, Judicial, Statewide, and Federal Offices, and Statewide Measures – County Auditor and up to 4 qualified electors of the county. (County Recorder takes the place of the County Auditor if the County Auditor is a candidate involved in the recount)

Recount Employee Responsibilities

Completed prior to the final determination of the Recount Board and completed in the presence of the recount participants

NDCC § 16.1-16-01(5)

- Request the sealed ballots containing the office being recounted in that jurisdiction from the County Recorder, City Auditor, or School Business Manager as the case may be
- Perform hand and eye review of all ballots cast and counted in the election
 - Make sure all ballots were properly initialed
 - Make sure ballots were initialed by qualified election judges and inspectors
 - Show ballots deemed disqualified to the Recount Participants
- Review poll books
 - Make sure electors were qualified to vote for the office being recounted
 - Make sure the number of voters in the poll book is equal to the number of ballots cast. (Remember the reports from the precinct workers about voters who may have fled the polling location without casting their ballot and other such identified anomalies that may make it impossible for these numbers to match.)
- Review the voting machine tabulation printout and/or precinct count of the votes

- Review the report of the canvassing board
- Verify voting machine tabulation accuracy: (If voting machines were used and if voting machines will be used to tabulate votes in the recount.)
 - Select 50 voted ballots containing the office being recounted
 - Hand count the votes from the office being recounted making sure the Recount Participants and Recount Board agree with the tabulation of the votes for that office on the 50 selected ballots
 - Open the polls on the voting machine and produce a “Zero Report” from the machine proving the machine is clear of any recorded votes
 - Count the same 50 ballots and verify the accuracy between the hand and machine counts
- Count all the votes of the recounted office
- Show the Recount Participants the ballots containing:
 - Over votes (more votes marked by the voter than allowed by the instructions)
 - Under votes (fewer votes marked by the voter than allowed by the instructions)
 - Write-in votes for that office
 - Irregular marks on the ballot within that office such as circling a candidate’s name, underlining a candidate’s name, writing in the name of a candidate without filling in the oval, putting a cross mark through a candidate’s name, etc.
- The chief election official must, for each of the ballots described above as well as any ballots challenged by the recount participants:
 - Determine the votes cast for the recounted office
 - Set ballot aside along with a notation of the challenge and how it was counted
- Deliver ballots set aside to the Recount Board for final determination of inclusion and exclusion in the final tabulation
- Give a tabulation report of the recounted ballots to the Recount Board
- Secure the ballots whenever a recess is called during the recount – 16.1-16-01(7)

Recount Participants

NDCC § 16.1-16-01(6)

- Each candidate involved in the recount or their representative
- A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the people

Recount Participant Rights

NDCC § 16.1-16-01(6)

- May observe, but not interfere with the work of the Recount Employees
- Challenge the inclusion or exclusion of any voted ballot containing the office being recounted with an explanation of the challenge

Recount Board

NDCC § 16.1-16-01(7)

- County Run Elections
 - State's attorney
 - Chairman of the board of county commissioners
 - County recorder
- Political Subdivisions
 - The governing body appoints the three member Recount Board
- No person may serve on the recount board if the person has anything of value bet or wagered on the result of the election, is a candidate for the office being recounted, or is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate involved in the recount
- If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the board of county commissioners or other political subdivision governing body who would be qualified to serve on the board shall appoint disinterested qualified electors of the county or other political subdivision to serve as alternates

Recount Board Responsibilities

NDCC § 16.1-16-01(7)

- Review all ballots challenged by either candidate or interested parties involved in the recount and on majority vote decide how those ballots are counted
- Authorized to initial all absentee ballots cast pursuant to section 16.1-07-09 that were not considered or counted at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12 or by the county canvassing boards as provided in section 16.1-15-19
 - 16.1-07-09 – details the procedures for election officials to follow when an absentee ballot arrives too late to be counted at an Election Day polling location
 - A ballot arriving late with a postmark or other official date stamp indicating the ballot was sent by the day before the election and arrives prior to the meeting of the county canvassing board may be counted by the canvassing board if the ballot is determined to be from a qualified elector
 - A ballot arriving late without postmark or other official delivery date stamp or if the date mark is illegible may be counted by the canvassing board if it arrives within two days after the election and the canvassing board determines that the ballot is from a qualified elector
 - 16.1-07-11 – references legally submitted absentee ballots arriving too late to be counted by an election board on Election Day. These ballots are normally reviewed and counted by the canvassing board, but as this relates to a recount board's duties, a recount board is authorized to review and initial any legally submitted absentee ballots that were accidentally not reviewed or counted by either an election board or the canvassing board.
 - 16.1-07-12 – describes the review of each absent voter's application and statement on the absentee ballot return envelope. An election board may rule either that the two signatures do not match or that the voter is not a qualified elector of the precinct. The election board then passes the ballot and all associated information to the canvassing board for a final decision on the

acceptance or rejection of the ballot. In the case of a recount, the recount board has the authority to review each accepted and rejected ballot upon which the office in question was placed. The recount board does have the authority to accept any previously rejected absentee ballot.

- 16.1-15-19 – the only thing this section of law references that hasn't already been addressed by the three previous sections of law is the counting of write-in votes. Technicalities such as misspellings, the use of initial letters, and abbreviations may be accepted. During a recount, a write-in vote without the corresponding oval being darkened is to be counted as the voter's intent to cast a vote for the write-in candidate. (For the sake of consistency, this also means that a voter who darkens the oval for a candidate whose name appears on the ballot and also writes the name of a candidate on the write-in line without darkening that oval should be considered an over vote if the votes cast for that office exceeds the number of votes allowed.)
- According to the Attorney General's opinion 96-L-226, Heidi Heitkamp replied to Secretary Jaeger's request for an opinion as to whether or not absentee ballots with a legally acceptable postmark (dated prior to election day) arriving after the meeting of the county canvassing board should be considered or counted during a recount. Her simple answer was, no, they should not be counted. The most telling paragraph of her opinion was the last which says,

It would not make sense to allow the ballots received after the county canvass committee had completed the county canvass to be counted in a recount, but not counted if no recount was requested or mandated by law. The absentee ballots received after the county canvass was complete were not considered and, therefore, neither accepted nor excluded by the election board or the county canvassing board. Under these circumstances, reviewing them during a recount would not serve the purpose of determining whether the ballots had been counted according to law. It is, therefore, my opinion that any absentee ballots that were legally postmarked but were not received until after the county canvassing board had completed the canvass of the county may not be included in the recount conducted by the county auditor.

- Make a final decision as to the outcome of the election, which is only subject to a decision made in a contest of an election provided for in law
- In short, the recount board has the authority to review all previously accepted and rejected ballots cast in the election containing the office being recounted. The recount board has the authority to accept an absent voter's ballot previously rejected by the election and canvassing board.

Election Official Responsibilities

The Official in Charge of the Recount after the Final Determination of the Recount Board
NDCC §§ 16.1-16-01(8) & 16.1-16-01(9)

- For all recounts
 - Certify the results no later than three days after the recount
 - Prepare a corrected abstract of votes
- For recounts limited to county, city, or other political subdivision
 - If there is no change in the outcome of the election, no further action taken
 - If there is a change in the outcome of the election, certificates of nomination or election must be issued

- If there is a change in the outcome of the election, the new result of a question submitted to the voters must be certified
- For recounts of federal, state, judicial, legislative, or other multi-county districts
 - Send by certified mail a certified copy of the corrected abstract to the secretary of state no later than three days after the recount
 - Certified abstract must include:
 - Total ballots cast by precinct
 - Total ballots counted by precinct
 - Total votes for each candidate receiving votes

Secretary of State's Responsibilities

Upon receipt of the new certified abstract for recounts involving federal, state, judicial, legislative, other multi-county districts or statewide measures

NDCC § 16.1-16-01(9)

- Immediately assemble the state canvassing board, who shall canvass the corrected abstracts and certify the election results
- Issue certificates of nomination or election
- Record the approval or disapproval of a measure submitted to the voters

Payment of Expenses Incurred

NDCC § 16.1-16-01(10)

- County Election – paid by the county on a warrant by the county auditor
- Political Subdivision other than a County – paid by the political subdivision
- City Election – paid by the city on a warrant by the city auditor
- Congressional, State, or Legislative Election (Presidential, Senate, and Judicial District recounts also covered by determination of Legislative intent) – paid by the state from the general fund upon approval by the secretary of state of a statement of expenses received from the county auditors
- Demand Recount – paid by the secretary of state, county auditor, or election official responsible for the political subdivision from the bond submitted by the person requesting the recount

Recount Checklist of Duties

- ☐ Determine or be notified that an automatic or demand recount situation exists
 - For county, city, or school, this will be made clear after the meeting of the canvassing board
 - For federal, state, judicial, legislative, or other multi-county districts, the notification will be given to you after the meeting of the state canvassing board
 - ☐ Set the date, time, and cost (if necessary) for the recount
 - ☐ Notification
 - Participants
 - Recount Board members
 - Media
 - ☐ Employ up to four recount employees
 - ☐ Recount meeting preparation
 - Blue and black pens will not be allowed in the area where ballots are recounted so make sure you have a supply of pens in other legible colors
 - Whenever a note is written, it must **NOT** be written while sitting on top of a ballot
 - Since there are standard reasons for which a ballot and votes can be counted or not counted, it may be helpful to prepare identification slips that can be attached to ballots during the recount
 - Possible notes:
 - Missing initials of election official
 - No votes marked – under vote
 - Too few votes marked – under vote
 - Too many votes marked – over vote
 - Vote counted – voter intent determined for _____ candidate
 - Vote not counted – voter intent impossible to determine
 - Vote not counted (candidate) _____ reason _____
 - Vote counted (candidate) _____ reason _____
 - ☐ Recount Meeting Agenda
 - Call to order
 - Make sure there are no blue or black marking devices in the room
 - Establish an employee to take meeting minutes
 - Administer oath to recount employees and board members (see last page for sample oath)
 - Review precinct ballot certification sheets to make sure all ballots have been delivered by official responsible for ballot retention
 - Inspect ballot wrapper seals
- Review poll books
- Make sure electors were qualified to vote for the office being recounted
 - Make sure the number of voters in the poll book is equal to the number of ballots cast. (Don't forget to take into account the reports from the precinct workers about voters who may have fled the polling location without casting their ballot)

and other such identified anomalies that may make it impossible for these numbers to match.)

Ballot Work

- Open ballot packs and begin manual review to search for proper election board member initials
- Set aside any ballots missing election board member initials
- Attach a note to any ballots missing initials to indicate why they are to be removed from the official tally
- Search for ballots containing a name written in for a candidate on the write-in line without the corresponding oval filled in and attach a note as to how the votes or no votes are counted on each of these ballots
- If voting machines will be used in the recount:
 - Manually count the votes cast for the office in question on 50 ballots from one precinct making sure that all present agree with the count
 - After clearing the election results on the voting machine memory card and run a zero votes report, insert each of the 50 ballots for tabulation
 - Close the polls on the voting machine to run the vote totals
 - Compare manual count to machine count to make sure they are identical

Machine tabulation (if used)

- Insert each ballot that has not been either separated or rejected to this point
- Make a determination of the votes or no votes for the office on any ballots rejected by the machine as uncountable (search for voter intent and attach a note to each ballot as to the way it has been counted)
- Review all ballots diverted to the write-in bin and manually count the number of votes cast for each write-in candidate
- Separate into a stack any ballots containing no votes cast for the office in question and search for other indications of voter intent
- Close the polls on the voting machine to run a results tally
- Add to the totals any votes that were required to be counted by hand because the manner in which the votes were marked by the voter made it impossible for the machine to tabulate them
- Prepare an official tally report for the recount board

Manual tabulation (if used)

- Separate the ballots into stacks of not more than 50 ballots each
- At least two recount employees must work together, one to read a ballot and the other to mark the vote(s) on a separate tick sheet
- Set aside any ballot in which the voter has marked the ballot in a manner other than required by the instructions on the ballot
- Attach a note as to how the votes or no votes are to be counted for each ballot marked in a manner other than described by instructions on ballot
- Verify for each stack of 50 ballots that the number of legitimate votes counted and no votes counted from all ballots equal the number of votes possible from the stack – recount entire stack if numbers are not equal
- Prepare an official tally report for the recount board

Recount participants may:

- Review all ballots, attached notes, and tally reports of the recount employees
- Challenge the inclusion or exclusion of any ballot by submitting a written note to be attached to the challenged ballot explaining the reason for the challenge

- Challenge the count or no count of any vote for the office in question by submitting a written note to be attached to the challenged ballot explaining the reason for the challenge
- Review the absentee ballot envelopes and applications
- Review the poll books

After the recount employees and participants finish their review, the recount board:

- By vote makes a final determination on all ballots excluded during the recount
 - By vote makes a final determination on how the votes are counted or not counted for each challenged ballot
 - Submit a final tally of the votes
- ☐ Election official responsible for the recount certifies the results of the recount within three days of the conclusion of the recount
- ☐ Election official responsible for the recount creates a corrected abstract of votes
- ☐ Election official responsible for the recount either:
- Issues certificates of nomination or election when the recount is for a county, city, or other political subdivision office; or
 - Certifies the new result of a measure; or
 - Sends by certified mail a certified copy of the corrected abstract to the Secretary of State for all federal, state, judicial, legislative, other multi-county offices, and state measures
- Certified abstract must include:
- Total ballots cast by precinct
 - Total ballots counted by precinct
 - Total votes for each candidate receiving votes
- ☐ Secretary of State
- Assemble the state canvassing board to canvass the corrected abstracts and certify the election results
 - Issues certificate of nomination or election when the recount is for a federal, state, judicial, legislative, or other multi-county office; or
 - Certifies the new result of a measure
 - Pays the expenses of the recount submitted by county auditor

North Dakota Century Code

Sections Relating to Recounts

(Displayed in order of reference within NDCC § 16.1-16-01)

16.1-16-01. Election recounts. A recount of any primary, special, or general election for nomination or election to a congressional, state, district, legislative, county, or city office, or for the approval or disapproval of any measure, question, or bond issue submitted to the qualified electors of this state or one of its political subdivisions must be conducted according to guidelines established by the secretary of state and as follows:

1. A recount must be conducted when:
 - a. Any person failed to be nominated in a primary election by one percent or less of the highest vote cast for a candidate for the office sought.
 - b. Any person failed to be elected in a general or special election by one-half of one percent or less of the highest vote cast for a candidate for that office.
 - c. A question, measure, or bond issue submitted to the qualified electors has been decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question at any election.
2. A demand for a recount may be made by any of the following:
 - a. Any person who failed to be nominated in a primary election by more than one percent and less than two percent of the highest vote cast for a candidate for the office sought.
 - b. Any person who failed to be elected in a general or special election by more than one-half of one percent and less than two percent of the highest vote cast for a candidate for that office.
3. A demand for a recount must be made within three days after the canvass of the votes by the county canvassing board in the case of county elections and city elections that are combined with the county and by the state canvassing board in the case of congressional, state, district, or legislative elections. The demand must be in writing, must recite one of the conditions in subsection 2 as a basis for the recount, must contain a bond in an amount previously established by the auditor or auditors doing the recount sufficient to pay the cost of the recount, and must be filed with:
 - a. The secretary of state when the recount is for a congressional, state, district, or legislative office.
 - b. The county auditor when the recount is for a county office or city office when a city election is combined with the county.
4. Within four days after the canvass of the votes by the state canvassing board in the case of congressional, state, district, or legislative elections, the secretary of state shall notify all the county auditors to conduct recounts as required by subsection 1 and, when a timely recount demand is received and it is in proper form, as required by subsection 2. The secretary of state shall fix the date or dates of the recounts of legislative contests to be held within seven days after giving notice to the affected auditors that recounts must be conducted. The secretary of state shall fix the date or dates of the recounts of statewide races to be held within fourteen days after giving

notice to the auditors that recounts must be conducted. Within four days after the canvass of votes by the county canvassing board or other political subdivision canvassing board, the county auditor or other political subdivision election official shall fix the date for recounts limited to the county, those cities within the county which combined the election with the county, or other political subdivision. The date must be within eight days after the canvass. In all recount proceedings, the county auditor or other election official, as appropriate, shall send notice of the date, place, and time of the recount to all candidates and petitioners involved by certified mail.

5. Recount employees. For recounts conducted by counties of federal, state, district, and county offices, measures, and questions, the county auditor must conduct the recount and may employ up to four qualified electors of the county to assist in the recount. The county auditor shall review all paper and electronic voting system ballots and associated records, whether the ballots were counted at the precinct or the county canvass, and all absentee ballots cast pursuant to section 16.1-07-09 to determine which ballots were cast and counted according to the law, including that the ballots were properly initialed and that the initials found on the ballots are verified as those of the precinct election board members. The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor is a candidate involved in the recount, the county auditor is disqualified from acting thereon, and the county recorder shall perform the duties required of the county auditor by this section. For recounts conducted by political subdivisions other than counties of local offices, measures, and questions, the election officer in a political subdivision shall administer a recount in the same manner as is required under this subsection for counties with respect to political subdivision ballot measures, questions, or bond issues.
6. Recount participants. The persons entitled to participate at the recount are:
 - a. Each candidate involved in the recount, either personally or by a representative.
 - b. A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.

The persons allowed to participate may challenge the acceptance or exclusion of any ballot. The person challenging a ballot must state the reason for the challenge based upon the law, and the county auditor or other political subdivision election official shall count the challenged ballot as the auditor or election official deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted.

7. Recount board. At the conclusion of the recount, the county auditor or other election official shall submit all challenged ballots to the recount board for decision. Except for political subdivision recounts other than counties, the recount board must be composed of the state's attorney of the county, the chairman of the board of county commissioners, and the county recorder. Unless otherwise specified by law, for a political subdivision other than a county, the governing body of the political subdivision shall appoint the recount board. No person may serve on the recount board if the person has anything of value bet or wagered on the result of the election, is a candidate for the office being recounted, or is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate involved in the recount. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the board of county

commissioners or other political subdivision governing body who would be qualified to serve on the board shall appoint disinterested qualified electors of the county or other political subdivision to serve as alternates. The recount board shall review all challenged ballots and on majority vote shall decide how those ballots are counted. The recount board is authorized to initial all absentee ballots cast pursuant to section 16.1-07-09 that were not considered or counted at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12 or by the county canvassing boards as provided in section 16.1-15-19. The decision of the recount board is final, subject to the right to contest the election as provided in this chapter. If during the recount a recess is called, the county auditor or other political subdivision election official shall take appropriate steps to safeguard the ballots.

8. The county auditor or other election official shall certify the results of the recount no later than three days after the recount. The recount result is the official result of the election in the county or other political subdivision. The county auditor or other election official shall prepare a corrected abstract of the votes. In a recount limited to the county, city, or other political subdivision, if the corrected abstract shows no change in the outcome of the election, no further action may be taken. If the corrected abstract changes the outcome of the election, the county auditor or other election official shall issue certificates of nomination or election accordingly and shall certify the new result of a question submitted to the qualified electors. In the case of a city election that is combined with a county election, the county auditor shall certify the new results of the election to the city auditor who is responsible for issuing new certificates of election if applicable.
9. In congressional, statewide, district, or legislative recounts, the county auditor shall, no later than three days after the recount, send by certified mail a certified copy of the corrected abstract to the secretary of state. The secretary of state shall immediately assemble the state canvassing board, who shall canvass the corrected abstracts and certify the election results. The secretary of state shall issue certificates of election or nomination or record the approval or disapproval of a question submitted to the qualified electors accordingly.
10. The expenses incurred in a recount of a county election must be paid by the county on a warrant by the county auditor. The expenses incurred in a recount of a political subdivision other than a county election must be paid by that political subdivision. The expenses incurred in a recount of a city election must be paid by the city on a warrant by the city auditor. The expenses incurred in a recount of a congressional, state, or legislative election must be paid by the state from the general fund upon approval by the secretary of state of a statement of expenses received from the county auditors. The expenses incurred in a recount demanded under subsection 2 of section 16.1-16-01 must be paid by the secretary of state or county auditor from the bond submitted by the person requesting the recount.
11. This section also applies to city elections that are not combined with the county except the city auditor, to the extent applicable, shall perform the duties of the county auditor.

16.1-07-09. Canvassing of mailed absent voters' ballots received late. In the case of congressional, state, county, city, or school district elections, if an envelope postmarked or otherwise officially marked by the United States postal service or other mail delivery system before the date of election and containing an absent voter's ballot is received by the officer too late to be forwarded to the proper voting precinct in time to be tabulated, the ballot must be

tallied by the canvassing board of the county, the governing body of the city, or the school board of the school district, as the case may be, at the time the returns are canvassed. Any envelope without a postmark or other official marking by the United States postal service or other mail delivery system or with an illegible postmark or other official marking and containing an absentee voter's ballot must be received by mail by the proper officer within two days after the election to be canvassed and counted. An absent voter may personally deliver the absent voter's ballot to the appropriate officer's office at any time before five p.m. on the day before the election. Before forwarding any ballot to a canvassing board pursuant to this section, the officer forwarding the ballot shall print the date of receipt on the envelope. Upon receipt, the canvassing board shall determine that the elector was qualified to vote in that precinct, that the elector did not previously vote in that precinct on the date of the election, and that the signatures on the absentee ballot application and the voter's affidavit were signed by the same person before allowing the ballot to be tallied.

16.1-07-11. Submitting ballot to inspector of elections. If the envelope containing the absent voter's ballot is received by the county auditor, auditor or clerk of the city, or business manager of the school district, as the case may be, prior to that person's delivery of the sealed package containing the official ballots to the inspector of elections of the precinct in which such absent voter resides, such ballot, after having been enclosed with the application in an envelope as required by section 16.1-07-10, must be enclosed in such package and delivered therewith to the inspector of the precinct. If the official ballots for the precinct have been delivered to the election inspector at the time of receipt by the proper officer of the absent voter's ballot, then the officer shall immediately mail the same postage prepaid to the election inspector or the officer or the officer's deputy may personally deliver it to the inspector. Any absent voter's ballot sent to the wrong precinct by the official whose duty it is to forward such ballots to the precincts, or any absent voter's ballot received by the inspector from the appropriate officer too late to be counted at the precinct, must be returned to the official by the election inspector, and must be tallied by the county canvassing board, the governing body of the city, or the school board, as the case may be, with other absent voters' ballots received too late to be forwarded to the precinct.

16.1-07-12. Opening ballot – Voting or rejecting – Depositing in ballot box – Preserving. At any time between the opening and closing of the polls on election day, the election judges of the relevant precinct first shall open the outer envelope and compare the signature on such application for an absent voter's ballot with the signature on the statement provided for in section 16.1-07-08. If the judges find that the statement is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct and has not voted at the election, they shall open the absent voter's envelope in such manner as not to destroy the statement thereon. They shall take out the ballot or ballots contained therein without unfolding the same, or permitting the same to be opened or examined, and after initialing the same as other ballots are initialed, they shall deposit the ballot in the proper ballot box and show in the pollbook of the election that the elector has voted. If the statement is found to be insufficient, or that the signatures do not correspond, or that the applicant is not then a duly qualified elector of the precinct, the vote may not be allowed, but without opening the absent voter's envelope, the election inspector or election judge shall mark across the face thereof "rejected as defective" or "rejected as not an elector", as the case may be. These rejected ballots are then turned over to the county canvassing board for final determination of eligibility. The subsequent death of an absentee voter after having voted by absentee ballot does not constitute grounds for rejecting such ballot.

16.1-15-19. County canvassing board to disregard technicalities, misspelling, and abbreviations – Write-in votes canvassed – Votes from unestablished precincts disregarded. In canvassing the election returns, the county canvassing board shall disregard technicalities, misspelling, and the use of initial letters or abbreviations of the name of any candidate for office if it can be ascertained for whom the vote was intended. Pursuant to section 16.1-12-02.2, the board shall canvass all qualifying write-in votes. The board may not count votes polled in any place except at established precincts. The county canvassing board is authorized to initial all absentee ballots cast pursuant to section 16.1-07-09 that were not considered or counted by election boards and to make a final determination of eligibility for all ballots which were rejected at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12.

Sample Oath

Recount Board, Election Official, and Recount Employees

The {Date of Election} {Primary, General, or Special} Election resulted in a recount in the {Jurisdiction} {office} contest. The following Recount Board, Election Official and Recount Employees met on {Date of Recount} in {Place} to review all ballots and certify the results of the recount in said {school district, city, or county}. The following oaths were administered to the Recount Board, Election Official and Recount Employees.

I, {Names of recount board members, election official, and recount employees} do solemnly swear that I will faithfully discharge the duties prescribed to me by the laws of North Dakota as a member of the Recount Board, Election Official or Recount Employees for {school district, city, or county} to the best of my ability.

Recount Board

_____{Name}, {Office Held}
Signature

_____{Name}, {Office Held}
Signature

_____{Name}, {Office Held}
Signature

Election Official

_____{Name}, {Office Held}
Signature

Recount Employees (if any utilized)

_____{Name}, {Office Held}
Signature

_____{Name}, {Office Held}
Signature

_____{Name}, {Office Held}
Signature

_____{Name}, {Office Held}
Signature

I, {Name of person administering oaths}, do certify that the above oaths were administered by me to {Names of recount board members, election official, and recount employees}, as members of the Recount Board, Election Official and Recount Employees in {school district, city, or county} on {Date}.

{Title of Official}